

MF 00-2

Tax Type: Motor Fuel Use Tax

Issue: Audit Methodologies and/or Other Computational Issues

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

---

---

**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

**v.**

**ABC AIRLINES, INC.,**

**TAXPAYER**

**No. 99-ST-0000**

**Account No. 0-00000**

**NTL No. 00-000000 0**

**Kenneth Galvin**

**Administrative Law Judge**

---

---

**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Ms. Dierdre K. White, on behalf of ABC Airlines, Inc., Mr. Shepard Smith on behalf of the Department of Revenue of the State of Illinois.

**Synopsis:**

This matter comes on for hearing pursuant to ABC Airlines' (hereinafter "ABC" or "Taxpayer") protest of Notice of Tax Liability ("NTL") for motor fuel tax, No. 01-298299 F, covering the period of January, 1993, through November, 1993, issued by the Department of Revenue (hereinafter the "Department") on June 18, 1999. A hearing was held in this matter on September 19, 2000, with the Department and Taxpayer stipulating to facts. Testimony at the hearing was provided by Department auditor, Daniel Giarraputo. Following submission of all

evidence and a review of the record, it is recommended that NTL No. 01-298299 F be finalized as issued. In support thereof, the following “Findings of Fact” and “Conclusions of Law” are made.

**Findings of Fact:**

1. ABC Airlines, Inc. is a transportation company headquartered in Anywhere, Illinois. Stip. ¶ 1.
2. During the tax months at issue, Taxpayer held an Illinois Fuel Distributors License, No. D-04424. Stip. ¶ 2.
3. Taxpayer filed Distributor/Supplier Motor Fuel Tax returns (hereinafter “returns”), Form RMFT-5, for each of the tax months at issue. Taxpayer also filed Illinois Motor Fuel Tax refund claims (hereinafter “claims”), Form RMFT-11, for each of the tax months. The RMFT-5 returns and RMFT-11 claims were filed on the following dates: January, 1993, (RMFT-5 return) on February 16, 1993 (RMFT-11 claim); February, 1993, on March 12, 1993; March, 1993, on April 15, 1993; April, 1993, on May 17, 1993; May, 1993, on June 16, 1993. Stip. ¶ 3; Exhibit Nos. 1, 2.
4. Line 14 of the returns reports the amount of fuel, in gallons, used by motor vehicles on public highways (hereinafter “on-road”). Line 15 of the returns reports the amount of fuel, in gallons, used for all other purposes (hereinafter “off-road”). Taxpayer made errors on the returns by reversing the amounts that should have been reported on lines 14 and 15. For example, the return for January, 1993, reports line 14 (on-road) gallons as 68,911 and line 15 (off-road) gallons as 15,850. These amounts should be reversed. Stip. ¶ 4; Exhibit No. 1.
5. The claims report on-road fuel usage in Column D and off-road fuel usage in Column E. Taxpayer made the same error in the claims by reversing the amounts that should have been reported in Columns D and E. For example, the claims for January, 1993, filed February 16,

1993, report on-road fuel usage (Column D) in the amount of 68,911 gallons and off-road fuel usage (Column E) in the amount of 15,850 gallons. These amounts should be reversed. As a result of the error, Taxpayer miscalculated its refunds. Stip. ¶ 5; Exhibit No. 2.

6. When Taxpayer realized that it made errors in its returns and claims for the taxable months, it filed an amended or second set of returns and claims on June 22, 1994. Taxpayer argues that these are “amended” returns and claims. The Department argues that these are “second” returns and claims. Stip. ¶ 6; Exhibit Nos. 3, 4.
7. The amended/second returns and claims reported the correct amount of fuel used on-road and off-road. The total amount of the amended/second claims was \$53,085. The total amount of the original claims was \$11,740. On November 10, 1994, the Department paid the Taxpayer \$136,906.78 by check which includes the amount of \$41,345 (\$53,085 amended/second claims minus \$11,740 original claims). The balance of the November 10, 1994, check (\$95,561) is for payment of claims not at issue in this case. Stip. ¶ 6; Exhibit Nos. 3, 4, 5.
8. The Department audited the amended/second returns and amended/second claims. On September 9, 1998, the Department sent ABC the audit findings and a “revised Amended Claim (RFMT-11)” showing that “a total of \$41,345 [was] disallowed from the Amended Claims filed for the period January, 1993, through May, 1993.” Stip. ¶ 7; Exhibit No. 6.
9. The Department issued a Notice of Tax Liability # 00-000000 0 in the amount of \$64,860 on June 18, 1999. The NTL reflects the Department’s payment to the Taxpayer of \$41,345 on November 10, 1994, a late payment penalty of \$6,202 and interest of \$17,313. Stip. ¶ 8; Exhibit No. 7.
10. Taxpayer filed a protest of the NTL on August 16, 1999. Stip. ¶ 9; Exhibit No. 8.

### **Conclusions of Law:**

The Motor Fuel Tax Law, 35 ILCS 505 *et seq.* requires that claims for refunds for motor fuel taxes paid must be filed “not later than one year after the tax was paid by the claimant.” 35 ILCS 505/13. It is undisputed that the original claims were timely filed within the one year period after the tax was paid. The last of the original returns, for May, 1993, was filed on June 16, 1993. The amended/second claims were filed on June 22, 1994, which is more than one year after the last return was filed. The Department’s position is that the amended/second claims are untimely because they were filed beyond the one-year statute of limitations period.

ABC maintains that “[t]he amended filings were merely corrections of clerical errors that existed on the timely filed returns and the timely filed refund claims. They did nothing more than correct the amount of refund that was properly owing to ABC Airlines.” Tr. p. 5. According to ABC, the additional refund from the amended/second returns “rightfully belongs to ABC Airlines. To not allow this refund will result in the Department’s unjust enrichment...” Tr. p. 25. In September, 1998, after the Department had completed its audit, it sent ABC a revised Amended Claim (RMFT-11), “to get the taxpayer to self-assess the tax without [us] issuing the notice of tax liability.” Tr. p. 20. ABC argues that “the Department of Revenue executes amended RMFT-11’s all the time. The taxpayer should be allowed the same latitude. Otherwise it is inconsistent – to allow the Department the use of the same form that [it] is prohibiting ABC from using is inconsistent.” Tr. p. 24.

In Dow Chemical v. The Department of Revenue, 224 Ill.App.3d 263 (1<sup>st</sup> Dist. 1991), Dow requested a \$401,237 refund in December, 1983, for the overpayment of taxes in tax years 1975 through 1978. The Department notified Dow that the refund for the overpayment would not be allowed because Dow’s request was filed after the statute of limitations had expired. Section 911

of the Income Tax Act requires that claims for income tax refunds must be filed not later than three years after the date the return was filed. 35 ILCS 5/911. The “central issue” of Dow’s appeal of the Department’s denial was “whether the Department was statutorily prohibited from crediting or refunding Dow’s overpayment due to the expiration of the limitations period on claims for refund.” *Id.* at 265.

The Court found that “the plain meaning of Section 911 is that the taxpayer has an affirmative duty to file for a tax refund within a prescribed period of time.” The Court noted further that although Section 911 read in conjunction with other statutes indicates that there is no limitation on the Department’s authority to make a refund or credit, “there is a limit on the taxpayer’s ability to file for one.” *Id.* at 267. Dow also argued that it should be allowed to recover its overpayment based on “equitable principles.” The Court stated:

Although Dow is correct in maintaining that if this court affirms the decision rendered below that the Department will receive a windfall at its expense, this fact alone does not provide justification for rendering a contrary judgment. Although it might seem reasonable to judicially toll the statute of limitations in order to fashion a remedy for Dow, such a decision is not supported by Illinois case law which holds that no exceptions which toll a statute of limitations or enlarge its scope will be implied. *Id.* at 268-269.

Based on the Court’s discussion in Dow, I must conclude that ABC had an “affirmative duty” to file its claims for refund and amendments to its claims within one year after the motor fuel tax was paid. To allow the amendments to be filed after the one-year period would create an “exception” and “enlarge the scope” of the one-year filing requirement. Additionally, ABC’s argument about the Department’s “unjust enrichment” does not provide “justification” for reaching a contrary decision in this case. As the court noted in Dow, a judicial tolling of the statute of limitations is not supported by Illinois case law. *Id.* It is noted further that the court in Dow characterized the case as one “which calls for a legislative remedy rather than a judicial one.” *Id.*

I must also conclude that the Department's use of an amended RMFT-11 in 1998 to report the results of the audit to ABC does not give the taxpayer "latitude" to file an amended RMFT-11 as a claim for refunds after the one-year period for filing claims is over. The auditor explained at the evidentiary hearing that the amended RMFT-11 "is what we use to pick up the tax liability. This is considered our amended return, the only processing document that we have to collect a tax due." Tr. p. 19. Dow recognized that there is no statute of limitations on the Department's ability to make a refund or credit, but there is a limitation on the taxpayer's ability to file for one. *Id.*

WHEREFORE, for the reasons stated above, it is my recommendation that Notice of Tax Liability No. 00-000000 0 should be finalized as issued.

ENTER:

October 25, 2000

---

Kenneth J. Galvin  
Administrative Law Judge